S T A T E O F N E W Y O R K

5029

2011-2012 Regular Sessions

I N S E N A T E

May 2, 2011

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to the applicability of property and casualty insurance rates

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 2307 of the insurance law is amended by adding two new subsections (e) and (f) to read as follows:

(E) NOTWITHSTANDING SUBSECTIONS (A) AND (B) OF THIS SECTION, FOR THE KINDS OF INSURANCE PROVIDED FOR IN SUBSECTION (C) OF SECTION TWO THOUSAND THREE HUNDRED ELEVEN OF THIS ARTICLE, FILING WITH AND PRIOR APPROVAL BY THE SUPERINTENDENT IS NOT REQUIRED.

(F) FOR POLICY FORMS NOT SUBJECT TO PRIOR APPROVAL PURSUANT TO SUBSECTION (C) OF SECTION TWO THOUSAND THREE HUNDRED ELEVEN OF THIS ARTICLE, IF THE SUPERINTENDENT, AFTER NOTICE AND HEARING TO AN INSURER, DETERMINES THAT A SPECIFIC POLICY FORM IS MISLEADING OR VIOLATIVE OF PUBLIC POLICY, HE OR SHE MAY ORDER THE INSURER TO CEASE ISSUING OR DELIVERING THE POLICY FORM IN THIS STATE. THE EFFECTIVE DATE OF THE CESSATION OF ISSUING OR DELIVERING THE POLICY FORM SHALL BE PRESCRIBED BY THE SUPERINTENDENT BUT NOT BE LESS THAN NINETY DAYS AFTER NOTICE TO THE INSURER.

S 2. Section 2311 of the insurance law is amended by adding five new subsections (c), (d), (e), (f) and (g) to read as follows:

(C) THE FOLLOWING KINDS OF INSURANCE WRITTEN ON RISKS OR OPERATIONS IN THIS STATE ARE NOT SUBJECT TO POLICY FORM AND RATE FILINGS WITH, OR APPROVAL BY, THE SUPERINTENDENT UNLESS THE SUPERINTENDENT REQUIRES SUCH FILINGS PURSUANT TO SUBSECTION (G) OF THIS SECTION:

(1) EXCESS OR UMBRELLA LIABILITY;

(2) SURETY AND FIDELITY;

(3) BOILER AND MACHINERY;

(4) ERRORS AND OMISSIONS LIABILITY;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(5) PROFESSIONAL LIABILITY OTHER THAN PHYSICIAN'S AND SURGEON'S MEDICAL MALPRACTICE;

(6) DIRECTORS AND OFFICERS, EMPLOYMENT PRACTICES, FIDUCIARY LIABILITY AND OTHER MANAGEMENT LIABILITY INSURANCE;

(7) INTELLECTUAL PROPERTY, ADVERTISING INJURY AND PATENT INFRINGEMENT LIABILITY;

(8) INTERNET LIABILITY INSURANCE;

(9) PROPERTY RISKS RATED UNDER A HIGHLY PROTECTED RISKS RATING PLAN;

(10) COMMERCIAL INLAND MARINE;

(11) AIRCRAFT LIABILITY AND PHYSICAL DAMAGE;

(12) UNIQUE OR UNUSUAL RISKS OR PORTIONS OF RISKS WHICH ARE NOT RATED ACCORDING TO MANUALS, RATING PLANS, OR RATE SCHEDULES, INCLUDING "A" RATES;

(13) COMMERCIAL LINES INSURANCE RISKS, OTHER THAN WORKERS' COMPENSATION INSURANCE, WHICH PRODUCE AN ANNUAL PREMIUM OF TWENTY-FIVE THOUSAND DOLLARS OR MORE, EMPLOYS OR RETAINS A RISK MANAGER TO ASSIST IN THE NEGOTIATION AND PURCHASE OF INSURANCE, AND

(I) HAS A NET WORTH OF AT LEAST SEVEN MILLION FIVE HUNDRED THOUSAND DOLLARS AS OF THE INSURED'S FISCAL YEAR END IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE;

(II) HAS GROSS ASSETS EXCEEDING TEN MILLION DOLLARS AND A NET WORTH OF AT LEAST ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AS OF THE INSURED'S FISCAL YEAR END IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE;

(III) IS A FOR-PROFIT BUSINESS ENTITY THAT GENERATES ANNUAL GROSS REVENUES EXCEEDING FIFTEEN MILLION DOLLARS, AND HAS A NET WORTH OF AT LEAST ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AS OF THE INSURED'S FISCAL YEAR END IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE;

(IV) IS A FOR-PROFIT BUSINESS ENTITY THAT HAS GROSS ASSETS EXCEEDING TEN MILLION DOLLARS AND GENERATES ANNUAL GROSS REVENUES EXCEEDING FIFTEEN MILLION DOLLARS AS OF THE INSURED'S FISCAL YEAR END IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE;

(V) IS A NOT-FOR-PROFIT ORGANIZATION OR PUBLIC ENTITY WITH AN ANNUAL BUDGET EXCEEDING TWENTY MILLION DOLLARS FOR EACH OF ITS THREE FISCAL YEARS IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE;

(VI) HAS FIFTY EMPLOYEES OR, TOGETHER WITH ITS PARENT, SUBSIDIARIES AND AFFILIATES, ONE HUNDRED EMPLOYEES, AS OF THE INSURED'S FISCAL YEAR END IMMEDIATELY PRECEDING THE POLICY'S EFFECTIVE DATE; OR

(VII) IS A MUNICIPALITY WITH A POPULATION OF FIFTY THOUSAND OR MORE PERSONS.

(14) ANY OTHER COMMERCIAL LINES, KINDS OR TYPES OF INSURANCE THAT THE SUPERINTENDENT:

(A) DETERMINES TO BE SUBSTANTIALLY SIMILAR TO A KIND OR TYPE OF INSURANCE NOT SUBJECT TO FILING REQUIREMENTS PURSUANT TO THIS SECTION;

(B) DETERMINES, AFTER A PUBLIC HEARING AND ON THE BASIS OF FACT AND CONCLUSIONS, SHOULD NOT BE SUBJECT TO POLICY FORM OR RATE FILING REQUIREMENTS FOR REASONS OF THE EXISTENCE OF A COMPETITIVE MARKET FOR SUCH INSURANCE OR TO IMPROVE THE GENERAL OPERATIONAL EFFICIENCY OF THE INSURANCE DEPARTMENT.

(D) FOR PURPOSES OF THIS SECTION, "RISK MANAGER" SHALL MEAN AN INDIVIDUAL WHO HOLDS THE PROFESSIONAL DESIGNATION OF CPCU, ARM, OR CRM WITH AT LEAST FIVE YEARS EXPERIENCE IN THE ANALYSIS AND TREATMENT OF RISK, LOSS EXPOSURE, INSURANCE COVERAGES, AND ALTERNATIVE METHODS AND PROGRAMS, WHO IS NOT EMPLOYED BY THE INSURER ISSUING THE POLICY OR ANY PERSON IN THE INSURER'S HOLDING COMPANY SYSTEM, AND WHO IS LICENSED AS AN INSURANCE PRODUCER PURSUANT TO ARTICLE TWENTY-ONE OF THIS CHAPTER, UNLESS EXEMPTED FROM LICENSING THEREIN.

(E) FOR PURPOSES OF THIS SECTION, "HIGHLY PROTECTED RISK" SHALL MEAN PROPERTY THAT IS SUBJECT TO A SUBSTANTIALLY LOWER THAN NORMAL PROBABILITY OF LOSS BY VIRTUE OF SUPERIOR CONSTRUCTION, SPECIAL FIRE PROTECTION EQUIPMENT AND PROCEDURES, AND MANAGEMENT COMMITMENT TO LOSS PREVENTION.

(F) POLICY FORMS AND RATES EXEMPTED FROM FILING AND APPROVAL REQUIREMENTS PURSUANT TO THIS SECTION MUST OTHERWISE COMPLY WITH THE STANDARDS SET FORTH IN THIS CHAPTER.

(G) FOR ANY KIND OF INSURANCE EXEMPTED FROM FILING REQUIREMENTS PURSUANT TO SUBSECTION (C) OF THIS SECTION, THE SUPERINTENDENT MAY REQUIRE RATE OR POLICY FILINGS FOR THAT KIND OF INSURANCE, PURSUANT TO THE STANDARDS SPECIFIED UNDER SECTION TWO THOUSAND THREE HUNDRED EIGHT OF THIS ARTICLE, PROVIDED, HOWEVER, THAT IN LIEU OF IMPOSING PRIOR APPROVAL, THE SUPERINTENDENT MAY PERMIT FILE AND USE OR FLEXIBLE RATING PURSUANT TO SECTION TWO THOUSAND THREE HUNDRED FORTY-FOUR OF THIS ARTICLE.

S 3. This act shall take effect immediately.